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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Closed Captioning and Video Description )  
of Video Programming )  
 )  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
 )  
Video Programming Accessibility )

Federal Communications Commission  
Office of Secretary

MM Docket No. 95-176

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AMERITECH NEW MEDIA, INC.'S  
REPLY COMMENTS

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Ameritech New Media, Inc. ("Ameritech") respectfully offers the following brief Reply to the Initial Comments on the Notice of Proposed Rulemaking released in the above-captioned docket on January 17, 1997 ("NPRM").

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## I.

### **THE RESPONSIBILITY FOR COMPLIANCE WITH THE COMMISSION'S CLOSED CAPTIONING RULES SHOULD BE PLACED ON THE PRODUCERS AND OWNERS OF THE PROGRAMMING.**

In its Initial Comments, Ameritech said that the responsibility for complying with its closed captioning requirements should be placed on the program owner, not on the multichannel video program distributor (“MVPDs”).<sup>1</sup> The Commission “recognize[s], from a practical standpoint, that captioning is most efficient at the production stage.”<sup>2</sup> The House Report reached the same conclusion.<sup>3</sup> It is on this basis alone that the Commission should assign captioning responsibility to the program owner rather than the MVPD, especially since the Commission said that its captioning rules would “take into account the relevant technical and costs issues ... .”<sup>4</sup>

The Initial Comments filed by others who would assign captioning responsibility to MVPDs, to the extent they include any justification at all, are based more on expediency than what is efficient and economical. For

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<sup>1</sup> A broadcaster may broadcast on one channel and, therefore, technically may not be a MVPD. Nevertheless, for purposes of captioning responsibility as proposed in the NPRM, broadcasters are in the same position as MVPDs.

<sup>2</sup> NPRM at par. 6.

<sup>3</sup> H.R. Report 104-204, 104th Cong., 1st Sess. at 114.

<sup>4</sup> NPRM at par. 2.

example, some argue that placing the captioning responsibility on MVPDs is more convenient because the Commission already extensively regulates MVPDs.<sup>5</sup> Others argue that it is easier for end users to contact the MVPD if there is a problem with the captioning.<sup>6</sup> Ameritech believes that it would be unreasonable to impose captioning responsibilities on MVPDs simply because it is more convenient than imposing that responsibility on program owners where it rightfully belongs.

NCTA takes a similar position in its Initial Comments, but one that is not entirely clear when applied. On the one hand, NCTA says that it “agree[s] with the FCC’s proposal” to impose responsibility on video programming providers for compliance with the Commission’s captioning rules.<sup>7</sup> On the other hand, NCTA says that “[t]o ensure that operators are not faced with liability for programming over which they have no practical control, however, the Commission should make clear that operators may rely on certifications from programmers that they are in compliance with the rules.”<sup>8</sup>

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<sup>5</sup> WGBH Educational Foundation at 3; A&E History Channel/Ovation at 18; Consumer Action Network at 2; Self Help for Hard of Hearing People at 2.

<sup>6</sup> *See, e.g.*, Self Help for Hard of Hearing People at 2.

<sup>7</sup> NCTA at 34.

<sup>8</sup> *Id.*

Ameritech agrees with this NCTA argument if NCTA means that, as long as the provider passes the captioned signal through to the viewing audience, a provider is “not faced with liability” for captioning because it does not have a duty to caption but, instead, can rely on a certification of compliance by the programmer who has the captioning responsibility. Otherwise, and as NCTA correctly notes, the provider may be “faced with liability for programming over which they have no practical control ... .”<sup>9</sup>

If the Commission does impose any captioning responsibility on MVPDs then, at a minimum, that responsibility should be shared with the program owner and the MVPD should be able to rely on certifications from those program owners that they are in compliance with the Commission’s captioning rules. If a MVPD has such a certificate, and then delivers the programming -- including the captions supplied by the program owner -- to the viewing public, the MVPD should not have any further responsibility under the Commission’s closed caption rules.

However, the Commission should assign primary captioning responsibility to the program owner for another important reason. If the program owner is responsible for captioning, the Commission also can

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<sup>9</sup> *Id.* However, if NCTA’s position is that the provider should have the captioning responsibility and be able to discharge that responsibility by producing a certificate of compliance from the programmer, then Ameritech disagrees with NCTA for the reasons noted in Ameritech’s Initial Comments and in the text of this Reply.

require that captioning done by the owner or its affiliate must be made available to all MVPDs on nondiscriminatory terms and conditions.<sup>10</sup> This would reduce the risk that captioning becomes another form of “exclusivity” with program owners giving their affiliates exclusive distribution rights to programming in exchange for the affiliate’s agreement to insert the closed captioning. Having adopted exclusivity rules designed to promote the availability of popular programming, the Commission should not adopt captioning rules that would allow program owners to limit the availability of such programming to those MVPDs which have established a special captioning relationship with the program owner.

## II.

### **THE COMMISSION SHOULD ADOPT A REASONABLE ENFORCEMENT MECHANISM FOR ITS CLOSED CAPTIONING REGULATIONS.**

Two rather novel ideas were presented in the Initial Comments concerning enforcement of the Commission’s captioning rules. One has merit. The other does not.

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<sup>10</sup> Whether or not program owners are made responsible for captioning under the Commission’s rules, if a program owner does caption a program, it would be reasonable for the Commission to require the program owner to make that captioning available on a non-discriminatory basis to others, including MVPDs. Naturally, it would be reasonable to reflect the cost of captioning in the price charged for the programming regardless who purchased it.

The idea that has merit is the one offered by NCTA, discussed earlier in this reply, which provides that the MVPD should be entitled to rely on a certification from the program owner that it is in compliance with the Commission's captioning rules.<sup>11</sup> Ameritech agrees that if the MVPD passes through the captioning provided by the owner, the MVPD should be entitled to rely on the owner's certificate of compliance so that, as NCTA observes, MVPDs are "not faced with liability for programming over which they have no practical control ... ." The MVPD could place the owner's certificate in a public file -- and perhaps post it on the Internet -- so the viewing public has a continuing record of what programming is captioned during the 10 year phase-in of the Commission's captioning rules.

The other idea calls for the creation of an industry-funded council that, *inter alia*, would be charged with the responsibility of addressing disputes involving the Commission's captioning rules. Legitimate disputes should be resolved through cooperative effort whenever possible and Ameritech commits to that goal. However, it is not necessary for the Commission to create a council in order to get parties to a dispute to engage in a cooperative effort to resolve that dispute. In fact, if parties truly are of a mind to cooperate, a council actually could impede the cooperative resolution of a dispute. Conversely, if parties are not willing to work

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<sup>11</sup> NCTA at 34. *See also* pp. 3-4 *supra*.


together cooperatively to solve their dispute, then a council probably will not be very useful. Instead, it will delay the resolution of disputes and generate additional costs for all involved. A Commission-mandated industry council for dispute resolution is not a good idea.

### III.

### CONCLUSION

The Commission's goal in this docket is to "maximize the amount of programming containing closed captioning with appropriate exemptions and reasonable timetables to take into account the relevant technical and costs issues involved."<sup>12</sup> Ameritech New Media believes that the Commission will be able to achieve that goal if it adopts rules which reflect the suggestions and comments included in Ameritech's Initial Comments and in this Reply.

Respectfully submitted,  
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Dated: March 31, 1997

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<sup>12</sup> NPRM at par. 2.

**CERTIFICATE OF SERVICE**

I, Edith Smith, do hereby certify that a copy of Ameritech's Reply Comments has been served on the parties on the attached service list, via first class mail, postage prepaid, on this 31st day of March, 1997.

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